

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WHITNEY DESIGN, INC.)	
a Missouri Corporation)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
BRABANTIA NEDERLAND B.V.)	
a corporation of the Netherlands,)	JURY TRIAL DEMANDED
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Whitney Design, Inc. (hereafter “WDI”), by and through its attorneys, seeks a Declaratory Judgment that certain wall mounted clothing dryers made and sold by WDI do not and have not infringed U.S. Design Patent D544,163 (the “‘163 design patent”) owned by Defendant, Brabantia Nederland B.V. (hereafter “Brabantia”), and that the ‘163 patent is invalid. A copy of the ‘163 design patent is attached hereto as Exhibit A and incorporated by reference herein. In support of this action, WDI alleges:

1. WDI is a Missouri corporation with a principal place of business at 5895 N. Lindbergh Boulevard, Hazelwood, Missouri 63042.
2. Brabantia is a corporation of The Netherlands with a principal place of business at Leenderweg 180, Valkenswaard, Noord-Brabant, The Netherlands 5555 CJ.
3. Brabantia has a U.S. subsidiary, Brabantia USA Inc., a New York corporation, with a principal place of business at 577 Chestnut Ridge Road,#3, Woodcliff Lake, New Jersey, 07677-8400.

4. Brabantia is engaged in the business of selling wall mounted clothing dryers allegedly covered by '163 design patent within this district, within Missouri and within the United States.

5. Brabantia has caused products allegedly covered by the '163 design patent to enter the stream of commerce directed to this district, Missouri and the United States.

6. Brabantia has sent letters accusing WDI of infringement into the United States and into this district. See Exhibits B, C and D attached hereto and incorporated by reference herein.

7. Brabantia's website directs purchasers to locations in the United States, Missouri and this district where its products allegedly covered by the '163 design patent may be purchased.

8. Retailers selling Brabantia product allegedly covered by the '163 design patent are sold to retailers in this district through online outlets, such as Amazon.com and BedBathAndBeyond.com.

9. This is a Complaint for Declaratory Judgment under 28 U.S.C. §§2201 and 2202 in respect to an actual controversy of which this Court has jurisdiction under the Patent Laws of the United States (35 U.S.C. §1 et seq.) and 28 U.S.C. §1338(a). Venue is appropriate under 28 U.S.C. §1391(b) and (c).

10. WDI has recently entered the market for wall mounted clothing dryers in the United States.

11. On or about October 8, 2008, Amy Goldsmith, an attorney representing Brabantia and acting in Brabantia's behalf, sent into this District letters to WDI. Letters stating that Brabantia ordered WDI to, among other things, cease and desist any importation, promotion,

display, offering for sale, sale, use and/or manufacture of products that allegedly infringe the '163 design patent. See Exhibits B, C and D.

12. The wall mounted clothing dryer sold by WDI and accused by Brabantia does not, and would not, infringe the '163 design patent.

13. The single claim of the '163 design patent, which Brabantia has alleged would be infringed by WDI making and selling the accused wall mounted clothing dryer, is invalid, void and unenforceable for one or more of the following reasons:

- (a) the claim is invalid under 35 U.S.C. § 101;
 - (b) the claim is invalid under 35 U.S.C. § 102;
 - (c) the alleged invention of said claim would have been obvious to a person having ordinary skill in the art in view of the prior art at the time of the alleged invention and was not patentable under 35 U.S.C. §103;
 - (d) the patentee did not comply with 35 USC § 171;
 - (e) the design patent does not comply with the requirements of 35 U.S. C. §112;
- and/or
- (f) the named inventor is not the inventor under Title 35 of the United States Code, including but not limited to 35 U.S.C. § 115.

14. Brabantia's accusations of infringement of the '163 design patent and Brabantia's demands for WDI to cease and desist importation, promotion, display, offering for sale, sale, use and/or manufacture of the WDI wall mounted clothing dryer that Brabantia has alleged infringes the '163 design patent constitute a grave and wrongful interference with the business of WDI in this District in violation of the Patent Laws of the United States. Further, the foregoing threats

and actions taken by Brabantia create an actual controversy within the scope of 28 U.S.C. §2201 and § 2202.

WHEREFORE, WDI prays that this Court enter judgment:

I. Declaring the '163 design patent to be invalid, unenforceable, void and/or not infringed by WDI.

II. That WDI be awarded its damages including attorneys fees for Brabantia's wrongful assertion that WDI infringes the '163 design patent.

III. Defendant Brabantia be taxed with the full cost of the suit and full amount of WDI's attorneys fees expended for defending itself against Brabantia's charge of patent infringement.

IV. The damages awarded to WDI be trebled.

V. The Court grant WDI any such other relief as the Court deems just and proper.

Whitney Design, Inc.

Respectfully submitted,

POLSTER, LIEDER, WOODRUFF & LUCCHESI, L.C.

By: s/Nelson D. Nolte

McPherson D. Moore, E.D. Mo. # 3890

Nelson D. Nolte, E.D. Mo. #111,801

12412 Powerscourt Drive, Suite 200

St. Louis, Missouri 63131

(314) 238-2400

FAX (314) 238-2401

mmoore@patpro.com

nnolte@patpro.com

ATTORNEYS FOR PLAINTIFF

Attachments:

Exhibit A – U. S. Design Patent D544,163 S

Exhibit B – Letter from Amy Goldsmith, dated October 8, 2008

Exhibit C – Letter from Amy Goldsmith, dated October 24, 2008

Exhibit D – Letter from Amy Goldsmith, dated November 13, 2008